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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Revision of the Commission's Rules to )  
Ensure Compatibility with Enhanced )  
911 Emergency Calling Systems )

CC Docket No. 94-102  
DA 98-1504

**FURTHER COMMENTS OF BELL ATLANTIC MOBILE, INC.**

Bell Atlantic Mobile, Inc. submits this response to the Commission's invitation for comments on the request for a declaratory ruling of the State of California 9-1-1 Program Manager.<sup>1</sup> The Manager asks for answers to three questions concerning the implementation of Enhanced 911 services by CMRS providers.

1. Do carriers have an obligation to deploy wireless E911 service (Phase D) in California despite the fact that State statutes do not provide immunity from liability for E911 service provided?

The Commission has to date refused to condition the obligation of CMRS carriers to provide E911 service on carriers' ability to limit their liability.<sup>2</sup> Many

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<sup>1</sup> Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Request for an Emergency Declaratory Ruling Filed Regarding Wireless Enhanced 911 Rulemaking Proceeding," DA 98-1504, released July 30, 1998.

<sup>2</sup> Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of  
(continued...)

parties have, however, challenged this refusal as unlawful,<sup>3</sup> and the Commission should use this opportunity to address those objections. It should permit CMRS carriers to file informational tariffs with the Commission that would afford them the same immunity limitations on liability that are afforded to landline carriers. This would give relief to CMRS providers until state or federal statutes limiting liability can be enacted.

The Commission's rejection of liability protection unlawfully discriminates against wireless providers by depriving them of the same ability to limit liability that landline carriers have under state statutes or tariffs. Worse, it puts wireless providers in a "Catch-22" situation. On the one hand, the E911 rules require them to serve subscribers and non-subscribers alike (itself a discriminatory obligation because it is not imposed on other types of carriers). On the other hand, the rules grant CMRS providers with no means to limit their liability toward non-subscribers. The Commission admits that CMRS providers "cannot contractually insulate themselves from liability when non-subscribers use their systems," but

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(...continued)

Proposed Rulemaking ("Order"), 11 FCC Rcd 18676 at ¶¶ 97-101;  
Memorandum Opinion and Order ("Reconsideration Order"), 12 FCC Rcd 22665 (1997) at ¶¶ 137-140.

<sup>3</sup> CTIA Petition for Reconsideration and Clarification, filed February 17, 1998, at 10-16; BellSouth Petition for Reconsideration, filed February 17, 1998, at 3-7; BAM Comments on Petitions for Reconsideration, filed March 18, 1998; AirTouch Communications Reply Comments, filed March 30, 1998, at 2-3; Ameritech Reply Comments, filed April 1, 1998, at 2-5; GTE Service Corporation Reply Comments, filed April 1, 1998, at 2-13.

then inconsistently finds it “reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carriers’ terms and conditions for liability.” Reconsideration Order at ¶ 140. The Commission does not explain precisely how CMRS carriers could accomplish this; and in fact, without the right to file informational tariffs, they cannot.

The many parties raising this serious problem propose a solution that would allow CMRS providers to file informational tariffs, contracts or other reports with the Commission, as do other carriers, which would provide them with the means to limit liability commensurate with the protections afforded other carriers. The Commission should immediately adopt this solution. This will enable CMRS providers to limit their liability in states such as California which have not yet enacted legislation.

2. If carriers are obligated to deliver Phase I service without immunity from liability (either statutory or contractual), is the State required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering their provision of wireless E911 service?

Section 20.18(f) of the E911 Rules states that CMRS providers must provide Phase I and Phase II E911 services only if “a mechanism for recovering the costs of the service is in place.” When it adopted this rule, the Commission stated, “No party disputes the fundamental notion that carriers must be able to recover their costs of providing E911 services.” Order at ¶ 89. Section 20.18(f) does not carve out particular kinds of costs as not being reimbursable or limit cost recovery. As a legal

matter, therefore, the Commission's Rules clearly entitle carriers to recover the cost of purchasing insurance. The purpose of the cost-recovery rule was to ensure that carriers not be forced to incur the costs of providing E-911. Purchasing insurance is no different from purchasing trunks, switching equipment, software, and other services needed to transmit 911 calls to PSAPs. Insurance is a routine cost associated with providing telecommunications services and indeed in engaging in any business. There is no basis to exclude it from allowable costs of providing E911.

Moreover, landline carriers need not purchase insurance because they are protected by state statutes and tariffs. Since CMRS providers in California and other states do not have immunity statutes, and cannot file federal informational tariffs (until the Commission permits this action, as requested above), regulatory parity dictates that they be able to recover the costs of purchasing insurance. Otherwise, they will incur costs that other carriers do not have to pay for.

The Commission should thus declare that the cost of purchasing liability insurance covering the provision of E911 service is properly recoverable by CMRS providers, and that arrangements for recovering those costs must be in place as a condition of providing that service.

3. Regarding selective routing, what is meant in the Commission's E911 First Report and Order by the reference to "appropriate PSAP"?

The Commission has previously addressed this issue. The E911 rules actually use the term "designated PSAP" to define the public safety answering point to which providers are to send 911. See Sections 20.18(e), (f). In its Reconsidera-

tion Order, the Commission noted that it had used the term “appropriate PSAP” in the text of its earlier decision, but had not intended any different meaning. Both terms meant that the local and state authorities had the duty to designate which PSAP was to receive which 911 calls:

To the extent that the terms “appropriate” and “designated” PSAP as used in the E911 First Report and Order may be unclear, we wish to clarify that the responsible local or state entity has the authority and responsibility to designate the PSAPs that are appropriate to receive wireless 911 calls.

Reconsideration Order at ¶ 98. The Commission emphasized that it was not the obligation of CMRS providers to determine which was the “appropriate” or “designated” PSAP in a jurisdiction, because “it may not be clear how a covered carrier would select among multiple PSAPs that may serve the same area but are managed by separate agencies or different government entities.” It concluded: “Until the relevant state or local governmental entities develop a routing plan for wireless 911 calls within their jurisdictions, therefore, covered carriers can comply with our rules by continuing to route 911 calls to their incumbent wireless PSAPs.” Id. at ¶ 99.

This was the correct decision. Many states have multiple (and often overlapping) municipal, county and state police and fire departments, highway patrol agencies, sheriff departments, rescue services, and other emergency services agencies. Carriers cannot be asked to determine which of these entities should receive E911 calls in a particular area, nor can the Commission make that decision. This designation must be the responsibility of the state itself, and it is critical that

the various state agencies reach agreement on a single PSAP for each area. Their failure to cooperate would create a serious risk of confusion and uncertainty, and the possibility that calls will not be sent to the service best located and suited to respond to emergencies.

In short, no ruling is necessary on this question because the Commission has already confirmed that it is the duty of state and local governments to designate the PSAP, and that until they do so, CMRS providers need not alter their current routing of 911 calls.

Respectfully submitted,

BELL ATLANTIC MOBILE, INC.

By: John T. Scott, III  
John T. Scott, III  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 624-2500

Its Attorneys

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